F. Issues to Resolve in Developing an Effective Water Market

A number of issues related to water transfers have been identified through the CALFED public process. Some of these issues are questions of legal interpretation; some are political or policy based; some are administrative or technical. Some issues exist because of misunderstanding or lack of understanding about how the current water transfer system operates.

The successful implementation of some of the components and elements of the CALFED Bay Delta program depends on the existence of a rational, well regulated statewide water market. The CALFED water transfer element can be used to identify and resolve issues which have impaired the development of a more efficient water transfer market or which will allow the other CALFED Program components to function more effectively.

Issues identified thus far in the process are listed below. Detailed issue papers discussing several of these issues are currently being prepared by CALFED agencies and consultants.

1. *Uncertainty about what constitutes transferable water* - There are a number of sub-issues under this topic, depending on the type of water being transferred and the method of transfer. Some of the subissues are:

    a. for transfers of conserved water, what is the definition of consumptive use;
    b. do water quality improvements, reductions in diversions, or changes in flow timing result in transferable water;
    c. determination of "real water" vs. "paper water";
    d. transfer of pre-1914 and riparian water;
    e. transfer of water held under water rights settlement contracts, in particular the distinction between water held under water rights and water held under contract;
    f. timing and availability of water for transfer;
    g. changes in consumptive usage in anticipation of transfers.

2. *Regulatory process problems and permit streamlining* - Are there any changes or improvements to the water transfer permit process, either by transfer proponents or by the agencies that would result in more timely processing?

3. *Accounting and tracking of instream transfers* - How can water transferred under a Water Code section 1707 permit be tracked and accounted for?

4. *Priority of access to project facilities for transferred water* - Is there a way to give transfer proponents more reliability in access without compromising project obligations to contractors? This include issues related to reservoir carryover and spill priorities.

5. *Carriage water requirements in the Delta* - When are cross-Delta transfers subject to carriage water requirements? How are these determined and by whom? When does the export/inflow ratio apply to transfers?

6. *Reservoir refill criteria* - What are the rules for reservoir refill in connection with a transfer of stored water? Who determines these?

7. *Groundwater transfers* - There are a number of subissues related to groundwater transfers and groundwater substitution transfers including: when, and subject to what conditions, can groundwater be directly transferred and exported out of a basin? Can transferred surface water be replaced with groundwater?

8. *Protection of environmental values* - What rules and criteria would ensure that environmental impacts of proposed transfers will be critically evaluated, and avoided or mitigated?

9. *The nature, extent and ability to mitigate third party impacts* - How will CALFED address the need for mitigation of third party impacts of transfers? What is the role of local agencies?

10. *User vs District initiated transfers and local control* - Who has the authority to sell water when the District holds the right or the contract? When the user holds the right, what is the role of the local agency?

11. *Water rights and area of origin protection* - Do upstream water rights and "area of origin" priorities need additional protections to avoid impacts from water transfers? If so, what?

12. *Assumptions about transfers and capacity of new facilities* - Should any assumptions be made about water transfers in sizing new facilities? What assumptions should be made about water transfers when calculating water supply results of new facilities?

13. *Interpretation of the "no injury" rule and the distinctions among types of adverse impacts* - How is "injury" defined? Are there different types of injury (e.g., significant, avoidable, acceptable)?